

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WILLIAM K. DUFFY, et al.,

Plaintiffs,

**ORDER**

CV 04-4061 (DRH)(ARL)

-against-

EAST PORT EXCAVATING & UTILITIES and  
STEVEN GOVERNALE d/b/a EAST PORT  
EXCAVATING & UTILITIES,

Defendants.

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**LINDSAY, Magistrate Judge:**

By order dated November 30, 2005, the undersigned reserved decision on the defendants' counsel's motion to be relieved as counsel. Defendants' counsel, Sesti & Associates, P.C., by Robert A. Sesti, based this request on the failure of the defendants to pay the legal fees incurred in this action and their failure to provide the cooperation needed to defend and/or resolve this action. Specifically, Mr. Sesti has alleged that while he had made arrangements for an audit of the defendants' records by the plaintiff for the purpose of reaching a resolution of this action at the defendants' request, the defendants have not permitted the audit to occur. Plaintiffs opposed the application, moving to compel discovery responses prior to defense counsel's withdrawal. The undersigned directed defense counsel to respond to the plaintiffs' motion to compel and he has complied with that order.

By letter dated December 6, 2005, defense counsel apprised the court that, prior to plaintiffs' service of the discovery demands at issue, the parties had agreed to a re-audit of the corporate defendant's books and records in order to avoid the expense of discovery and to facilitate a settlement of this case. In addition, while defense counsel has not provided a copy of the discovery demands at issue, he has represented that the demands seek information which the

plaintiffs' will gain access to during the re-audit and have had access to from prior audits.

According to defense counsel, the re-audit of the corporate defendant's books and records was scheduled for December 6, 2005. To date, plaintiffs have not communicated with the court and therefore the court cannot determine whether the issues raised in plaintiffs' motion to compel have been resolved. Accordingly, the parties are directed to electronically file a joint letter by **January 6, 2006** advising whether the December 6, 2005 re-audit resolved the discovery issues raised in the plaintiffs' motion.

Dated: Central Islip, New York  
December 22, 2005

**SO ORDERED:**

/s/  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge